

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:08cv382
(3:05cr391)

ARTHUR T. McILWAINE,)
)
Petitioner,)
v.) **ORDER**
)
UNITED STATES OF AMERICA,)
)
Respondent.)

THIS MATTER is before the Court upon Petitioner's "Motion to Amend Reply to AUSA's response Pleadings to 2255 Motion" filed September 21, 2009 (Doc. No. 18) and his Motion for Current Status Quo and Motion to Compel Production of Documents" filed September 21, 2009 (Doc. No. 19.)

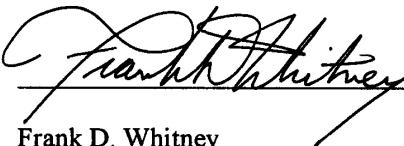
In a ten-page Order filed September 13, 2009, the undersigned denied and dismissed Petitioner's Motion to Vacate (Doc. No. 16.) The Court based its Order on Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. §2255 filed on August 20, 2008 (Doc. No. 1); the Government's Response and Motion for Summary Judgment filed February 20, 2009 (Doc. No. 13); and Petitioner's Affidavit filed on March 27, 2009 (Doc. No. 15.) Because the undersigned has already ruled on Petitioner's Motion to Vacate, his case is now closed. Petitioner's motions provide no basis to disturb the Court's judgment and his motions will be denied.¹

¹ The Court notes that Petitioner filed an affidavit with attachments on March 27, 2009 in response to this Court's February 23, 2009 Order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975) advising Petitioner that Respondent had filed a Motion for Summary Judgment and allowing thirty (30) days for Petitioner to file a response. Petitioner's response was filed on

IT IS, THEREFORE ORDERED that Petitioner's "Motion to Amend Reply to AUSA's Response Pleadings to 2255 Motion" and "Motion for Current Status Quo and Motion to Compel Production of Documents" are denied.

SO ORDERED.

Signed: September 24, 2009



Frank D. Whitney
United States District Judge



March 27, 2009 and such response did not indicate that Petitioner had not received the Government's Motion for Summary Judgment. Instead, such document included arguments in support of Petitioner's Motion to Vacate which this Court considered. Petitioner has allowed almost six months to pass and now for the first time contends that he needs additional time to file an amended response to the Government's Motion for Summary Judgment because he never received a copy of the Government's Motion. The timing of this request is suspect given that the Court recently denied and dismissed Petitioner's Motion to Vacate on September 14, 2009 coupled with the fact that Petitioner did file an affidavit responsive to this Court's Roseboro Order and did not then or in the six months since that filing, mention that he did not have a copy of the Government's Motion. The Court is not persuaded by Petitioner's request and will not disturb the judgment.